



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
FREEDOM OF INFORMATION ACT BRANCH  
Washington, D.C. 20570

Via email

June 2, 2023

Re: FOIA Request NLRB-2023-001506

Dear Justin O'Connor (Rochester Beacon):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on March 30, 2023, in which you seek all records in *Foodlink, Inc.*, Case Nos. 03-CA-285978, 03-CA-285977, 03-CA-285889, and 03-CA-285847. You did not assume financial responsibility for the processing of your request, and you requested a waiver of fees. You also sought expedited processing of your request.

We acknowledged your request on March 30, 2023. Your request for expedited processing is granted.

Your request is denied in part and granted in part, as explained below.

After conducting searches of the Agency's electronic casehandling system, NxGen, I have confirmed that the requested cases are open cases being investigated by the Agency's Region 3 office. As such, I have determined that certain case file records responsive to your request are exempt from disclosure pursuant to Exemption 7(A) of the FOIA. 5 U.S.C. § 552 (b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with enforcement proceedings. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). Therefore, given the open status of the requested cases, now pending investigation in the Region, any investigatory records in the case files are, and will continue to be, withheld in full pursuant to Exemption 7(A) while the case remain open.

Your request is granted to the extent that I have attached the formal records in the requested case files, which include the charge, docketing letters to the parties, notices of appearances of counsel, the settlement agreement, notices to employees, and compliance related records. The formal records in the file are available to the public pursuant to NLRB FOIA regulations regardless of the open/closed status of the case. Upon my review, redactions have been made to portions of these records to protect the privacy interests of individuals named in

the records. These redactions were made pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy, and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

Please note that Exemption 7(A) protection is “temporal in nature.” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Justice*, 746 F.3d 1082, 1097 (D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). As such, case file records may become disclosable, subject to applicable exemptions, after the case closes, that is, once a Board decision and/or court order issues, there has been full compliance with a settlement, or the case has otherwise been closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of the cases can be tracked on the Agency website at [www.nlr.gov](http://www.nlr.gov) by going to the Cases & Decisions tab, clicking case search, entering the case numbers in the search box and viewing the case pages or by clicking the links here: <https://www.nlr.gov/case/03-CA-285978>, <https://www.nlr.gov/case/03-CA-285977>, <https://www.nlr.gov/case/03-CA-285889>, and <https://www.nlr.gov/case/03-CA-285847>, respectively.

For the purpose of assessing fees, we have placed you in Category C, as a representative of the news media, in that you qualify as a person “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vii). Accordingly, there is no charge assessed for this request. Given your placement as a news media requester, your request for a fee waiver is moot.

You may contact Joseph Mullaney, the Attorney-Advisor who processed your request, at (202) 273-3863 or by email at [Joseph.Mullaney@nlrb.gov](mailto:Joseph.Mullaney@nlrb.gov), as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency’s FOIA Public Liaison is:

Kristine M. Minami, FOIA Public Liaison  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: [FOIAPublicLiaison@nlrb.gov](mailto:FOIAPublicLiaison@nlrb.gov)

Telephone: (202) 273-0902

Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: (202) 741-5770  
Toll free: (877) 684-6448  
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt, Chief FOIA Officer  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: [DLCFOIAAppeal@nrlb.gov](mailto:DLCFOIAAppeal@nrlb.gov)

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

*/s/ Synta E. Keeling*

Synta E. Keeling  
FOIA Officer

Attachment: (71 pages)